

FILED

JUL 27 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANDREW K. MIRIKITANI,

Defendant - Appellant.

No. 05-10366

D.C. No. CR-00-00442-HG

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Hawaii
Helen Gillmor, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Andrew K. Mirikitani appeals from the 51-month sentence imposed following his jury trial conviction for wire fraud; fraudulently obtaining and converting government property; accepting a bribe; extortion under color of

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

official right; attempting to hinder the communication of information relating to the commission of a federal offense; and witness tampering. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

The judicial fact-finding that occurred at Mirikitani's sentencing did not violate the Sixth Amendment because he was not sentenced pursuant to a mandatory guidelines scheme. *See United States v. Booker*, 543 U.S. 220, 245-46, 259-60 (2005); *see also United States v. Ameline*, 409 F.3d 1073, 1077-78 (9th Cir. 2005) (en banc). Further, the district court was not required to make factual findings beyond a reasonable doubt to comport with the guarantee of due process contained in the Fifth Amendment. *See United States v. Staten*, 450 F.3d 384, 392-93 (9th Cir. 2006).

AFFIRMED.